

THE HIGH COURT OF SINDH, KARACHI

Present:

Justice Mohammad Karim Khan Agha
Justice Nisar Ahmed Bhanbhro

CP No.D-4520 of 2016

[Syed Sadiq Hussain v. Secretary of Law and others]

Petitioner : Syed Sadiq Hussain through Mr. Muhammad Haseeb Jamali, Advocate assisted by Mr. Muzammil Hussain Jalbani Advocate

Respondents : Through Mr. Ali Safdar Depar and Mr. Ahmed Khan Khaskheli, Assistant Advocates General Sindh

Dates of hearing : 05-03-2025

Date of decision : 19-03-2025

J U D G M E N T

Mohammad Karim Khan Agha, J. - Through this petition, the petitioner has sought directions of this Court to relax the conditions of medical fitness for his appointment as Civil Judge/Judicial Magistrate and to release the salary and other benefits which he has right from his date of recommendation for appointment i.e. 22-07-2015.

2. The facts, in nutshell, are that in pursuance of advertisement issued on 01-12-2014, the petitioner being practicing advocate applied for the post of Civil Judge and Judicial Magistrate and after his recommendation by the Selection Committee, he appeared before Medical Board at Services Hospital for his medical examination, but due to his impaired vision, the Medical Certificate was withheld by the Medical Board. Per petitioner, he was advised to apply to the Hon'ble High Court for relaxation in the condition of medical fitness for which he sent an application to Registrar of Hon'ble High Court, but all in vain.

3. The learned counsel for the petitioner contended that that the petitioner who is aged about 30 years has been suffering from impaired vision and continued his education by commuting on daily basis. Learned counsel added that when the petitioner could do advocacy, then petitioner can also do the job of Civil Judge/Judicial Magistrate; that the Petitioner with his effort after working hard for months achieved this appointment and now he has been deprived from the same on account of medical reasons which is beyond his powers; that when petitioner has successfully passed all the levels for the post of Civil Judge/Judicial Magistrate then it is now fundamental right of the petitioner and he deserves that he should not be restrained from getting post concerned on mere grounds of medical fitness and at least the petitioner may be allowed to work for probation period so as to ascertain that whether the petitioner is fully capable of doing the job concerned or not. If it had been already stated that only medically fit person could apply for the post of concerned then the petitioner would not even have applied for the post and not even have any expectation for achieving any success in life; that Hon'ble court can grant him medical relaxation for the concerned post because there is a provision in Sindh Judicial Services Rules 1994 that relaxation could be granted in individual cases, therefore, the petitioner has presented his case before this court for kind consideration; that the petitioner after succeeding in written test was interviewed by a panel of highly qualified and vastly experienced Hon'ble Judges of High Court who had a very clear idea of complications and difficulties of the post in question and if they had a slightest doubt that the petitioner would not be able to fulfill the responsibilities of the said post then the Hon'ble Selection Committee would not clear the petitioner in the interview; that recently Lahore High court had announced 2% quota for the appointment of disabled persons as Judges so the same treatment may be meted out to him by creating such post in order to facilitate such persons who are suffering from minor disabilities but otherwise are competent and able to justify the requirements for the post of Civil Judge/Judicial Magistrate and as such the petitioner should be appointed as Civil Judge/Judicial Magistrate.

4. In contra, Learned AAG contended that the petitioner applied for the post of Civil Judge & Judicial Magistrate being an advocate enrolled for sub-ordinate Court on 22-10-2012. Therefore, the maximum age limit even in case of extension of benefit of upper age limit, being three years, for an advocate practicing having practiced at the bar is thirty five (35) years. While, petitioner's age as of 28.01.2025 is 39 Years 03 months 30 days. Learned AAG added that in the year of 2019, petitioner submitted application for the post of Additional District & Sessions Judge (B-20) which was accompanied with (i) Certificate dated 23.02.2010 issued by Medical Superintendent, Services Hospital and Civil Surgeon, Karachi wherein Syed Sadiq Hussain son of Syed Azhar Hussain (Petitioner) has been declared as visually disabled and (ii) Disability Certificate dated 25.02.2010 issued by Government of Sindh, Provincial Coordinator, Social Welfare Department wherein type of his disability is mentioned as **"Rt. Eve Blind, left Eye V. Poor Vision"**. Petitioner could not succeed to pass in first preliminary (M.C.Qs) test for the post of Additional District & Sessions (BS-20) in the year of 2019. However, as per available record, petitioner did not submit above mentioned certificate of disability issued in the year of 2010 while applying for the post of Civil & Judicial Magistrate in the year of 2014. Per AAG, in the subject advertisement for the post of Civil Judge & Judicial Magistrate published in the year of 2014, there was no mention of 'Disable Quota'.

5. We have heard learned counsel for the parties and perused the record with their able assistance.

6. The petitioner was a promising practicing young lawyer who had aspired to become a Civil Judge/Judicial Magistrate in order to serve the public. Accordingly, he applied for the post of Civil Judge/Judicial Magistrate pursuant to advertisement in which he full filled all the relevant criteria. Hence, he was allowed to sit the examinations for the post whereby he passed the first MCQ's test and was called on 19th April 2015 for the three hours written subjective test which he also passed. He then on 22nd June 2015 was called for interview before the Provincial Selection Board consisting of the senior most judges of this court which

he also passed and was listed as number 39 on the merit list out of 78. He was then sent along with the other successful candidates before the standing medical Board for his medical. Unfortunately the medical board due to his impaired vision found him unfit to join the civil service in the following terms;

"According to Sindh C.S.R. the visual requirement for Government Service inductees are already prescribed as "A candidate may be admitted into the civil services of Government if ametropic in one or both eyes, provided that, with correcting lenses not exceeding -5-D, the acuteness of vision be not less than 6/9 in one eye and 6/6 other, there be no morbid changes in the fundus in either eye". This connects that, even if one eye has no vision (which is the case of said applicant) the acuteness of the vision of functional eye should not be less than 6/9. Unfortunately the said application had visual status severely low below the requirement in as much that right eye had no vision (NPL) and left eye merely 5/60 (even with glasses)." (bold added)

7. This adverse medical report/finding which lead to the withholding of the petitioner's medical certificate shattered the hopes, aspirations and dreams of the petitioner of becoming a Civil Judge/Judicial Magistrate. The petitioner, however, despite this tremendous set back ploughed on in order to fulfill his aspiration of becoming a Civil Judge/Judicial Magistrate and as such wrote a letter to the Hon'ble Chief Justice of this court setting out the adverse medical finding and requesting for a relaxation in his medical fitness requirement in which case, if granted, his medical certificate would be released and he could take up his post. Unfortunately, his letter went unanswered as per record. Thus, as a last resort he approached this court in the constitutional jurisdiction for relief by filing this petition in 2016 which is over 8 long years ago.

8. The above narrative has been confirmed by the comments of the Registrar who only took the exception that the petitioner was over age and that the job advertisement for the post for which he applied did not include any disability quota. In fact a close examination of the record reveals that at the time of his application the petitioner was within the proscribed age limit which is supported by the fact that if he had not

been he would not have even been allowed to sit the examinations let alone be called for interview.

9. The main obstacle in the petitioner's way to being appointed as a Civil Judge/Judicial Magistrate is his impaired vision which is a disability. Even in the comments of the registrar at para 10 it is stated as under;

"10. It is also submitted that in the year of 2019, petitioner Syed Sadiq Hussain also submitted application for the post of Additional District & Sessions Judge (B-20) which was accompanied with (i) Certificate dated: 23.02.2010 issued by Medical Superintendent, Services Hospital and Civil Surgeon, Karachi wherein Syed Sadiq Hussain S/o Syed Azhar Hussain (Petitioner) has been declared as visually disabled and (ii) Disability Certificate dated 25.02.2010 issued by Government of Sindh, Provincial Coordinator, Social Welfare Department wherein type of his disability is mentioned as "Rt: Eye Blind, left Eye V. Poor Vision." (bold added)

10. Like society itself life is not static and we must move with the times and be alert to protect those persons who suffer from disabilities in all aspects of their life especially in the work place and ensure that they do not suffer discrimination. To this extent Pakistan has attempted to move with the times so as far back as 1981 **The Disabled Persons (Employment and Rehabilitation) Ordinance** was promulgated which gave protection to disabled persons especially in terms of job quota's. Section 10 of that Ordinance provided that not less than one percent of the total number of persons employed by an establishment at any time shall be disabled persons. Later the Sindh Differently abled persons (Employment, Rehabilitation and Welfare) Act 2014 was promulgated which increased this quota to 3% which was later repealed and replaced with the Sindh Empowerment of "Persons with Disabilities" Act 2018 pursuant to the United Nations Convention on the Rights of "Persons with Disabilities where the aforesaid convention which was ratified by Pakistan in 2011 laid down the following principles for empowerment of Persons with Disabilities as under;

- (a) respect for inherent dignity, individual autonomy including the freedom to make one's own choice, and independence of persons;
- (b) non-discrimination;
- (c) full and effective participation and inclusion in society;
- (d) respect for difference and acceptance of 'Persons with Disabilities' as part of human diversity and humanity;
- (e) equality of opportunity;
- (f) accessibility;
- (g) equality between men and women;
- (h) respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities;

11. Such Principles are reflected in the aforesaid Act. Undoubtedly, this Act was a step in the right direction, of which many further steps need to be taken to support and enhance the rights of the less empowered in society such as women, minorities and the poorest segments of society in all aspects of human life such as health and education to ensure their rights to life under Article 9 of the Constitution, in an Islamic welfare state which is obliged, even under Articles 4 and 25 of the Constitution, to treat all individuals equally and without any discrimination and in accordance with law.

12. Section 11 of the Sindh Empowerment of "Persons with Disabilities" Act 2018 deals with the Skills Development and Equity in Employment of persons with disabilities the most important of which is Section 11 (12) which is set out below for ease of reference;

"(12) The Government shall reserve a quota of five percent (5%) at various levels for the 'Persons with Disabilities' in the Government departments, institutions, entities, and corporate entities owned and managed by the Government. The Government shall through notification provide for such relaxation of upper age limit for employment of person with disabilities as it thinks fit." (bold added)

13. Thus, it can be seen that the Government is moving with the times and passing legislation which is more responsive to the needs of its citizens as and when such need arises. The courts must also play their role in implementing such beneficial legislation.

14. We find that the Registrar's argument in his comments that the advertisement did not cater for differently abled persons frivolous as when the petitioner applied for the post **The Disabled Persons (Employment and Rehabilitation) Ordinance 1981** was in the field which we find along with the other Acts relating to disabled persons mentioned above are automatically built into and become apart of any job advertisement. Furthermore, it is well settled by now that such special laws override general laws and other special laws earlier in time and as such the petitioner should have been appointed as a Civil Judge/Judicial Magistrate on the disabled quota provided that he could fulfill the requirements of the post. Even this court, we are embarrassed to say, let the petitioner down by ignoring his appeal for help by not even bothering to reply to his application to relax his medical condition.

15. The petitioner should have been treated in a more humane and compassionate manner. If this court was doubtful that the petitioner could perform the required functions of the post it should have called him and discovered the extent of his disability itself and found out whether he would be able to perform the functions of his post despite his disability and even put him on probation if necessary.

16. We note that since the filing of this petition that the petitioner has continued to regularly practice law before both the high courts and lower courts where he has numerous cases to his credit. In court he was able to read his petition, he can type and demonstrated that he can use electronic devices with the aid of other modern devices for persons with impaired vision. If he could pass all the written tests, interviews, continue to practice law despite his disability why can he not be appointed as a judge? In fact those junior to him on the merit list prior to his appointment were appointed as Civil Judge and Judicial Magistrate as they passed their medical which evidences the competency of the petitioner

17. In the case of **Peerzada Waqar Alam vs. National Accountability Bureau (NAB) through Chairman, Islamabad and others (2023 SCMR**

742), the idea of any establishment/organization including NAB not having a specific job quota for disabled persons in the face of the legislation for disabled persons as referred to earlier in this judgment was repelled in the following terms;

"5. While initially NAB withdrew the offer of appointment of the petitioner on the ground that the petitioner was not medically fit but while dismissing the departmental appeal of the petitioner, the ground urged by NAB was that there was no disability quota against the post of Assistant Director in NAB. Under section 10 of the Disabled Persons' (Employment and Rehabilitation) Ordinance, 1981² establishments (including NAB) are to employ persons with disabilities "not less than 3% of the total number" of persons employed at any time by the said establishment. Learned Counsel for NAB referred to an opinion sought from the Establishment Division of the Federal Government which states that the disability quota shall be for posts BS-15 and below. The said letter clearly offends the provisions of the Ordinance. There is no limitation or distinction of grade in allocating 3% quota for persons with disabilities in any organization. The 3% quota for persons with disability applies across the board in an organization, covering all tiers of posts in an organization and goes upto to the highest post including that of the Chairman, NAB." (bold added)

18. The petitioner in this case is a disabled person to the extent that he only has partial vision however a blind man was appointed a Judge by the Lahore High Court Committee after the following order was passed by the Supreme Court in the case **Regarding Reconsideration of Yousaf Saleem a Blind candidate as appointment as a civil judge** in case No.SMC 15/2018 dated 25.06.2018 (unreported) in the following terms;

The attached article titled "Blind Man's dream to be judge gone dark" by Umar Cheema, published in "The News" dated 22.4.2018, and the programme "Zara Hat Kay" televised on Dawn News on 23.4.2018, highlight that one Yousaf Saleem, who is a gold-medalist from the University of the Punjab in LLB (Honors) Programme in the year 2014 and who topped the written examination of the Civil Judges conducted by the Lahore High Court in the year 2017 amongst 6500 candidates, was not selected in the interview on the ground that he had a different ability i.e. "blindness".

2. A person can hold the post of a judge even if he is blind, provided he meets all the other qualifications. It appears that in this case his fundamental rights under Articles 9, 14 and 25 of the Constitution, the provisions of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), ratified by Pakistan in the

year 2011, the 3% quota under the Disabled Persons (Employment and Rehabilitation) Ordinance, 1981, and the jurisprudence developed by the Lahore High Court in PLD 2017 Lahore 406 and PLD 2017 Lahore 1 were not considered by the Lahore High Court.

3. Therefore, the matter is referred to the Hon'ble Chief Justice. Lahore High Court and the relevant committee of the High Court for reconsideration of the named candidate and to give a speaking opinion." (bold added)

19. We are also fortified in our view by a Judgment dated 27.10.2021 of the Lahore High Court in Intra Court Appeal 179 of 2020 in the case of **Government of Punjab V Muhammed Kamram Jamil** (unreported) which held as under with regard to the appointment of a blind man as a school teacher;

"6. The world is in search and hunting for best of the best environment and opportunities for the persons with disabilities whereas, still it is said that the eligibility for such persons in the area of teaching are those, who can read, speak, write and can also use blackboard. We feel pain, when an exception is taken that the blind, deaf and dumb candidates cannot enter in the race, because of a different ability, for which they are not at fault, but it's a God Package with which they have to live till the time they take their last breath or they regain their ability to see, hear and speak. The State functionaries are responsible to allow them to compete with those who are blessed with all abilities, otherwise the talent in the world was not supposed to be at the positions and with the distinctions earned by the persons with disabilities.

12. A State cannot deviate from its fundamental duty to do at every level what it can, for the grooming and promoting the persons with disabilities so as to dislodge the impression from their minds that they are oppressed and neglected not only by the State but by the Society also. The apex Court in Malik Ubaidullah's case dealing the question of rights of persons with disabilities under the heading "Medical and Social model" was pleased to observe as under: -

"One of the major difficulties faced by the persons with disabilities is that employers have the erroneous assumption that these people will probably underperform in most areas of their duties - something which is actually not the case. Another plausible issue is that when the majority of work places are not made accessible to people with disabilities, employers may feel that they will have to make an unwarranted investment to provide facilities for people with disabilities and some do not believe in the employment potential of such people"

13. The Honourable Supreme Court under the heading "Rights based approach towards disability" was further pleased to observe as under:

"The human rights model or rights-based model embodies the values of principles of dignity, respect, equality and social justice to the disabled. The UN Convention of the rights of persons with disabilities of 2006 ("CRPD" or "Convention") created a binding framework for the rights-based model of the disability law. Disabled persons by virtue of being a human have the right to enjoy life, liberty, equality, security and dignity"

14. Under the heading "DISABILITY AND OUR CONSTITUTION" the apex Court was further pleased to observe as under: -

"Our Constitution, as a whole, does not distinguish between a person with or without disabilities. It recognizes inherent dignity of a human being; equal and inalienable rights of all the people as the foundation of freedom, justice and peace. Every person is entitled to all the rights and freedoms set forth therein, without distinction of any kind. It, therefore, applies equally to persons with disabilities, guaranteeing them full enjoyment of their fundamental rights without discrimination. The triangular construct of the right to life, dignity and equality under the Constitution provides a robust platform for mainstreaming persons with disabilities. The purpose of the Constitutional rights to human dignity is to realize the Constitutional value of the human dignity; to realize a person's humanity; his free will; the freedom to shape his life and fulfill himself. It is a person's freedom to write his life story. Such vibrancy and vitality is the hallmark of a living Constitution in the democracy"

20. We find this to be a most unfortunate case where the petitioner's career as a judicial officer was sacrificed at the altar of red tapism, strict adherence to technicalities, a lack of compassion and empathy for ones fellow man which lead to the petitioners rights under Articles 4, 9, 14, 18, 25, 27, 37 and 38 of the Constitution (some of which are fundamental rights) being all violated to a certain extent, if not completely, and likewise the legislation in place to protect disabled persons from discrimination in the work place.

21. As such we relax the medical fitness criteria of the petitioner and direct that the petitioner be appointed Civil Judge/Judicial Magistrate on the terms and conditions applicable under the Sindh Judicial Service Rules within 4 weeks of the date of this Judgment and if no such vacancy

exists he be appointed when the next vacancy arises. Since he has been practicing as a lawyer and earning his livelihood in that manner up to today no back pay or benefits are awarded to him and we leave it up to the Administrative Committee of this Court to determine the petitioner's seniority in the event that the petitioner makes such application.

22. A copy of this Judgment shall be sent to the Secretary law Government of Sindh and the Registrar of this Court for compliance.